APPEAL NO. 93393

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993) (1989 Act). A contested case hearing was held in (city), Texas, on April 20, 1993, to decide three issues: whether the respondent (hereinafter claimant) was an employee of (employer) on (date of injury); if claimant was an employee on (date of injury), whether she was in the course and scope of her employment when she was injured; and if claimant suffered a compensable injury on (date of injury), whether she has disability entitling her to temporary income benefits as a result of this injury. Hearing officer determined that the claimant did not establish that she suffered an injury that arose out of and in the course and scope of her employment for Link Temporaries on (date of injury), and that she did not establish disability as defined by the 1989 Act. Accordingly, she denied claimant's claim for benefits.

Appellant, hereinafter carrier, does not challenge the hearing officer's decision and order. However, it requests this panel's review of certain findings of fact made by the hearing officer as unsupported by the credible evidence or contrary to the great weight and preponderance of the evidence. The claimant neither filed an appeal nor a response to the carrier's request for review.

DECISION

Because the carrier was relieved of liability for benefits under the 1989 Act by the hearing officer's decision, we hold that a review of the challenged findings of fact would be moot, and we therefore affirm the hearing officer's decision and order.

The claimant worked as a day laborer for (company), a temporary employment agency (employer). She testified that on (date of injury), she had signed in at employer's office but had not received a work assignment when she slipped and fell, twisting her ankle. She was treated at an emergency room and later by a physician who diagnosed a strain. The claimant also testified that, even though her accident occurred after she had signed in but before she had been given a work assignment, she already had received a "repeat ticket" from Grocers Supply, where she had been assigned a few days before.

WP, employer's risk manager, identified employer's computerized list of persons who had signed in on (date of injury), and pointed out that claimant's name was not on the list. He further said a "repeat ticket" was not a guarantee of employment but only an indication from the client company that the particular individual had performed well and was eligible to receive another assignment. The carrier's position was that the claimant did not sign in on (date of injury) and that she did not fall and injure her ankle on that date. It also argued that if it were found that claimant did injure her ankle after signing in on (date of injury), she was not an employee when the incident occurred and the injury did not arise out of the course and scope of her employment.

The hearing officer made the following findings of fact challenged by the carrier:

FINDINGS OF FACT

2.Claimant signed in at [employer's] office on (date of injury) by reporting her name and social security number to an appropriate [employer] employee.

4.Claimant slipped and fell while waiting for a work ticket/job assignment from [employer] on (date of injury).

5.Claimant suffered an ankle strain as a result of slipping and falling on (date of injury).

10.Claimant was physically unable to return to work as a result of her ankle injury from (date of injury) to approximately December 1, 1992.

The hearing officer also made other findings of fact not challenged on appeal, as follows:

FINDINGS OF FACT

7.Claimant's repeat ticket from Grocers Supply for (date of injury) was not a guarantee or (sic) employment on this date and did not consume (sic) either an express or implied contract of hire by [employer].

8.Claimant did not establish that she was in the service of [employer] under a contract of hire at the time that she fell and injured her ankle on (date of injury).

9.Claimant did not establish that she was engaged as an employee in an activity in the furtherance of the affairs or business of [employer] when she fell and injured her ankle on (date of injury).

As this panel has held in a similar case, Texas Workers' Compensation Commission Appeal No. 92618, decided January 4, 1993, the unappealed findings in this case were material to the outcome, and any change to Findings of Fact Nos. 2, 4, 5, and 10 would not change the ultimate decision and order that the claimant did not suffer a compensable injury and did not have disability, a determination which was not appealed by either party. As we held in Appeal No. 92618, *supra*, we determine here that any discussion on the issues raised by the carrier would be a moot exercise. This holding constitutes this panel's determination on each issue as required by Article 8308-6.42(c).

The decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge